IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.608 of 1987
Date of Decision: 13.09.2006

Kamla Devi and others

Appellant

versus

Nand Lal and others

Respondents

CORAM:- **HON'BLE MR. JUSTICE JASBIR SINGH**

Present: Shri Suvir Sheokand, Advocate for the appellants
Shri Inderjit Sharma, Advocate for respondent No.3

Jasbir Singh, J. (Oral)

This order will dispose of three appeals bearing FAO Nos.608, 697 and 726 of 1987. Facts are being mentioned from FAO No.608 of 1987 filed by the claimants.

It is not in dispute that Ram Chander, the only bread earner of the family of the claimants, had died on 31.1.1986 in a motor accident. He was sitting on a tractor. It has been stated that on the fateful day, tractor alongwith trolley was going to Kurukshetra at about 3.30 p.m. when it reached near village Kamoda, a truck bearing No.HRF 4337 came from the rear side. The said vehicle was driven in a very rash and negligent manner. It hit the trolley from behind, pushed both tractor and the trolley towards one side. Due to that tractor hit against the tree and came to a halt. In that accident Ram Chander died at the spot. Appellants/ claimants are his widow, two minor children and a minor sister. Factum of accident and death of Ram Chander in that accident is not in dispute. The Tribunal has granted compensation of Rs.1,15,200/- alongwith interest @ 12% p.a.

Counsel for the appellants, by referring to statements of PW4 to PW7 has stated that the deceased was a progressive farmer and was

maintaining a dairy farm. Compensation has been granted equal to the wages of a servant. Counsel argued that head of the family can not be compared with a servant and further it has come on record that after death of Ram Chander, supply of milk had stopped, there was decrease in agricultural income also. It was also stated that to grant compensation, the formula as suggested by their Lordships of the Hon'ble Supreme Court in *U.P.State Road Transport Corporation and others v. Trilok Chandra and others, 1996 ACJ 831,* should have been applied by the Tribunal. Keeping in view age and size of the family of the deceased, he prays that appeal be allowed and the compensation which is less, be enhanced.

After hearing counsel for the appellants, this Court feels that prayer made is justified. It is apparent from the records that the deceased was a farmer. Apart from his own land, he was getting land for cultivation on lease, from the Gram Panchayat. It has also come on record that he was maintaining a dairy and was selling the milk. PW1, her widow had categorically stated that he was earning an amount of Rs.20000/- to Rs.25,000/- per year. It has come in evidence of Hari Singh (PW5), Secretary of the Cooperative Society of the milk producers that the deceased was selling milk worth Rs.800-850 per month and after his death, supply of milk had stopped. PW6, who is a commission agent, had stated that the deceased used to sell his crop to him and to prove the said fact, he had brought on record a copies of Form-J, issued at the time of selling of the crop. PW7, who was Secretary of the Gram Panchayat, had stated that the deceased had taken 6 acres 6 kanals of land of the Gram Panchayat on lease. All these facts clearly demonstrate that after death of Ram Chander, the family had suffered heavily. The Tribunal has gone wrong to say that there is no evidence to prove financial loss caused to the family. To award compensation, reliance has been placed only upon a fact that after death of Ram Chander, one servant was employed and income of that servant had been assessed at Rs.900/- per month and by applying cut of 1/3rd, dependency of the family has been assessed at Rs.600/- per month. This Court feels that the finding given is not justified. It is true, that when compensation is claimed in motor accident cases, there is always an attempt to exaggerate income of the deceased, in this case, his widow has said that he was earning around Rs.2000/- per month. Be that as it may, there exists sufficient evidence on record, on the basis of which, it can safely be said that the deceased was earning not less than Rs.1000/- per month. He was

maintaining large family. Under these circumstances, it is not expected that he was spending 1/3rd amount of his income, upon himself. In view of formula laid down by the Hon'ble Supreme Court in *U.P.State Road Transport Corporation's case (supra)*, to calculate compensation, unit system can be applied. In view of ratio of above said judgment, total number of units comes to 7 i.e. (2 major, including the deceased and three minors in the family), 2 units can be earmarked for self expenditure of the deceased, by deducting the same from his income, amount of dependency of family would come to Rs.715 (1000-285) per month. Admittedly, age of the deceased was about 25 years. The Tribunal has applied multiplier of 16, which is on the lower side. Multiplier of 18 would serve the ends of justice. On the basis of above said calculation, the total compensation payable to the claimants would come to Rs.154,440/- say Rs.1,55,000/-. Interest awarded by the Tribunal is on the higher side. It is ordered that the claimants shall be entitled to claim interest from the date of moving application, for grant of compensation, till realisation of amount @ 10% p.a. Liability of the Insurance Company – respondent No.3 is only up to Rs.1,50,000/-. FAO No.608 of 1987, filed by the claimants stands allowed, in the terms mentioned above.

So far as appeal bearing No.697 of 1987 is concerned, the appellants have failed to make out any case for enhancement of compensation. The findings given by the Tribunal in Paragraph No.18 are perfectly justified. There exists no evidence on record to show that any extra loss was suffered by the appellants. Accordingly, FAO 697 of 1987 stands dismissed.

FAO No.726 of 1987 was filed by the owner of the truck. The manner, in which, the accident had occurred, clearly indicates that the driver

of the truck was at fault. Truck had hit the tractor trolley from behind and pushed the same to a sufficient distance. Tractor stopped only after hitting a tree, on one side of the road. The Tribunal, by taking note of statements made by PW2 and PW11, has rightly come to a conclusion that the driver of the truck was at fault. Finding given is perfectly justified. No case is made out for interference. Accordingly FAO No.726 of 1987 also stands dismissed.

September 13, 2006 **(Jasbir Singh)**
gk **Judge**